

Before the
Administrative Hearing Commission
State of Missouri



DIRECTOR OF DEPARTMENT OF
INSURANCE, FINANCIAL INSTITUTIONS
AND PROFESSIONAL REGISTRATION,

Petitioner,

vs.

ROBERT M. MOORE,

Respondent.

No. 14-0285 DI

DECISION

Robert M. Moore is subject to discipline because he pled guilty on two occasions to a criminal offense that was a felony and crimes involving moral turpitude.

Procedure

On February 28, 2014, the Director of the Department of Insurance, Financial Institutions and Professional Registration (“the Director”) filed a complaint seeking to discipline Moore. On June 9, 2014, Moore was served with a copy of the complaint and our notice of complaint/notice of hearing by certified mail.¹ Moore did not file an answer. On July 11, 2014, the Director filed a motion for summary decision. Regulation 1 CSR 15-3.446(6)² provides that we may decide

¹ Served via UPS Ground, signature required with a tracking number. This is considered certified mail under § 1.020(1). Statutory references, unless otherwise noted, are to RSMo Supp. 2013.

² All references to the CSR are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update.

this case without a hearing if the Director establishes facts that Moore does not dispute and entitle the Director to a favorable decision.

We gave Moore until July 28, 2014, to respond to the motion, but he did not respond. Therefore, the following facts are undisputed.

Findings of Fact

1. On January 29, 2002, in the Circuit Court of St. Louis County, Missouri (“the Court”), Moore pled guilty to one count of the Class B felony of Distribution, Delivery, Manufacture or Production or Attempt to or Possess with Intent to Distribute, Deliver, Manufacture or Produce a Controlled Substance.

2. On January 29, 2002, the Court sentenced Moore to five years’ incarceration with the Missouri Department of Corrections, but suspended the execution of that sentence, sentenced Moore to 14 days’ shock incarceration, and placed Moore on supervised probation for five years.

3. On September 15, 2003 in the Court, Moore pled guilty to three counts of the Class B felony of Distribution, Delivery, Manufacture or Production or Attempt to or Possess with Intent to Distribute, Deliver, Manufacture or Produce a Controlled Substance.

4. On September 15, 2003, the court sentenced Moore to six years’ incarceration with the Missouri Department of Corrections, but suspended the execution of sentence, ordered Moore to complete 120 days in the Choices program, and placed Moore on supervised probation for five years.

5. The Director received Moore’s completed application for a resident insurance producer license (“the application”) on May 31, 2012.

6. Background Question No. 1 of the application asks, “Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime?”³

7. Moore answered “Yes” in response to Background Question No. 1.

8. On June 5, 2012, Moore faxed documents to the Director to further explain his response to Background Question No. 1.

9. Moore’s fax included:

(a) a letter dated June 5, 2012 that disclosed that he had pled guilty in 2002 to one count of distribution, delivery, manufacture or production of a controlled substance or possession with intent to distribute, deliver, manufacture or produce a controlled substance and had pled guilty in 2003 to three counts of distribution, delivery, manufacture or production of a controlled substance or possession with intent to distribute, deliver, manufacture or produce a controlled substance;

(b) the Docket Sheet and Judgment and Sentence for one case; and

(c) the Docket Sheet, Order of Nolle Prosequi as to Count 4, and the Sentence and Judgment for the other case.

10. Moore was mistakenly issued an insurance producer license on December 19, 2012.⁴

Conclusions of Law

We have jurisdiction to hear this complaint.⁵ The Director has the burden of proving that Moore has committed an act for which the law allows discipline.⁶ The Director argues that there is cause for discipline under § 375.141:

1. The director may suspend, revoke, refuse to issue or refuse to renew an insurance producer license for any one or more of the following causes:

³ Exhibit 1A to the motion.

⁴ Exhibit 2 to the motion.

⁵ Section 621.045.

⁶ *Missouri Real Estate Comm’n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

(6) Having been convicted of a felony or crime involving moral turpitude[.]

Distribution, Delivery, Manufacture or Production or Attempt to or Possess with Intent to Distribute, Deliver, Manufacture or Produce a Controlled Substance is a criminal offense under § 195.211:

1. Except as authorized by sections 195.005 to 195.425 and except as provided in section 195.222, it is unlawful for any person to distribute, deliver, manufacture, produce or attempt to distribute, deliver, manufacture or produce a controlled substance or to possess with intent to distribute, deliver, manufacture, or produce a controlled substance.

3. Any person who violates or attempts to violate this section with respect to any controlled substance except five grams or less or marijuana is guilty of a class B felony.

More pled guilty to one count of this Class B felony on January 29, 2002, and three counts of this Class B felony on September 15, 2003. He is subject to discipline under § 375.141.1(6).

Moral turpitude is:

an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman or to society in general, contrary to the accepted and customary rule of right and duty between man and man; everything “done contrary to justice, honesty, modesty, and good morals.”⁷

In *Brehe v. Missouri Dep’t of Elementary and Secondary Education*,⁸ a case that involved discipline of a teacher’s certificate under § 168.071 for committing a crime involving moral turpitude, the court referred to three classifications of crimes:⁹

(1) crimes that necessarily involve moral turpitude, such as frauds (Category 1 crimes);

⁷ *In re Frick*, 694 S.W.2d 473, 479 (Mo. banc 1985) (quoting *In re Wallace*, 19 S.W.2d 625 (Mo. banc 1929)).

⁸ 213 S.W.3d 720 (Mo. App., W.D. 2007).

⁹ *Id.* at 725 (quoting *Twentieth Century-Fox Film Corp. v. Lardner*, 216 F.2d 844, 852 (9th Cir. 1954)).

(2) crimes “so obviously petty that conviction carries no suggestion of moral turpitude,” such as illegal parking (Category 2 crimes); and

(3) crimes that “may be saturated with moral turpitude,” yet do not involve it necessarily, such as willful failure to pay income tax or refusal to answer questions before a congressional committee (Category 3 crimes).

The court stated that Category 3 crimes require consideration of “the related factual circumstances” of the offense to determine whether moral turpitude is involved.¹⁰

The Supreme Court has already found that felony narcotics convictions are crimes involving moral turpitude.¹¹ Therefore, we find these felonies to be Category 1 crimes. There is cause for discipline under § 375.141.1(6).

Summary

We grant the motion for summary decision and cancel the hearing.

SO ORDERED on August 11, 2014.

\s\ Sreenivasa Rao Dandamudi
SREENIVASA RAO DANDAMUDI
Commissioner

¹⁰*Brehe*, 213 S.W.3d at 725.

¹¹*In re Shunk*, 847 S.W.2d 789 (Mo. banc 1993).